File No. 101

Collection No.

HC 20/1/47 1885.

Mysore Residency

Pros / Serial Nos 1 - 9.

79

Subject.

Civil Courts of the c + m Station have jurisdiction to entertain suits for debts contracted by European Soldiers

Previous References.

Later References.

S. 97. (Blue.)

MGIPC—FP—725DCF—S&P—(G-1576)—14-3-28—60,000.

From the Officer Commanding Bangalore
No. 89/A dated 30th May 1855.

Requests that a ruling be passed on the question whether Soldiers are liable to be sued for debt in the Civil Courts and Courts of Small Causes.

A native woman named Perakka sued three Soldiers of the 12th Royal Lancers in Bangalore viz, Farrier Sergeant Taylor, 2d Sergeant Body, and 2d Sergeant Bucklaud in the Court of Small Causes (Civil Court) at Bangalore for sums of money due to her on account of charcoal supplied by her from time to time to them. The sums claimed were as follows: —

From 2d Sergeant Taylor — Rs: 17-6-0
Body — " 12-8-0
Bucklaud. " 19-8-0

*Translations of the Plaints are herewith put up.

The Judge returned the plaints in these cases to the Plaintiff endorsing thereon to the effect that they should be presented to the proper Court the Defendants being Military men.

2 The Plaintiff thereupon petitioned the Military Authorities, and the Officer Commanding Bangalore has ~~sent~~ made the reference (No. 1)

53

to this office for disposal of the question whether Soldiers are liable to be sued in the ordinary Civil Courts and Courts of Small Causes for debt.

3. The Officer Commanding Bangalore has forwarded with his letter copy of a letter dated 4th November 1875 from the Advocate General, Calcutta, to the Deputy Judge Advocate General, Simla, in which the former Officer has given it as his opinion that European Non-Commissioned Officers and Soldiers in India are liable to be sued for debt in Civil Courts and Courts of Small Causes. The Officer Commanding Bangalore requests that such orders may be passed as may be deemed necessary to ensure due justice being done to the Plaintiff, as it is obviously inadvisable that Soldiers should be permitted to escape from the legal consequences of their acts.

(in the 2 cases mentioned in Sec. 144 of the Act 5 1861) ?

4. The present question is a technical one and therefore the Office is not able to give an opinion on it with confidence. But, ~~the following~~ after consulting the law on the point, the following is respectfully submitted

for consideration and orders

5. In the first place, looking into the Civil Procedure Code (Act XIV of 1882), it is observed that Sections 10 & 11 provide that the Civil Courts have jurisdiction over all persons without regard to descent or place of birth, and that those Courts have jurisdiction to try all suits of a civil nature except suits of which their cognizance is barred by any enactment for the time being in force. These sections apply to Mofussil Small Cause Courts also.

Is such a barring enactment in this case seems to be the Act of 1887

6. Again, Chapter XXXII (Ss. 466–469) of the Civil Pro: Code relates to suits by and against Military Men, and this Chapter is applicable to Small Cause Courts also. Under that Chapter a Military Officer or Soldier who has to prosecute or defend a suit in the Civil Courts and who cannot obtain leave of absence, may appoint any person to prosecute or defend the suit in his stead (S. 465). When an Officer or Soldier is a Defendant the Court has, under S. 468, to get the summons served upon him through his Commanding Officer.

~~The above provisions therefore clear~~

~~these [illegible] it is~~

7. At the same time it is provided in Section 5 that nothing in the Civil Pro: Co:

affects the jurisdiction or procedure of Military Courts of Request. It follows therefore that all Civil suits against Military Officers and Soldiers (other than suits which can be disposed of by Military Courts of Request) are cognizable by the ordinary Civil Courts.

8 Now turning to the Army Act, 1881, * herewith put up & as regards the jurisdiction of Military Courts of Requests, it is observed that S. 148 of that Act provides that where any part of Her Majesty's regular forces is serving in India beyond the jurisdiction of any Court of Small Causes established by or under the authority of the Governor General in Council, actions of debt and personal actions against officers and other persons subject to Military Law, with the exception of persons being Soldiers of the Regular Forces, shall be cognizable before a Court of Requests composed of Officers, provided the value of the suit does not exceed 400 Rupees. It will be noticed that in the section above referred to, "Soldiers of the regular forces" are excepted from the jurisdiction of Courts of Requests.

9. As regards "Soldiers of the regular forces", it is provided in S. 164

of the Army Act ~~it is provided~~ that such a Soldier shall not be liable to be taken out of Her Majesty's Service by any process, Execution or order of any Court of Law or otherwise, or to be compelled to appear before any Court of Law, Except, among other things, on account of any debt, damages or sum of money, where the Amount Exceeds 30 £.

It is provided further on in the same Section that any person having cause of action or suit against a Soldier of the Regular Forces may, notwithstanding anything in this Section, after due notice in writing given to the Soldier proceed in such action or suit to judgment and have Execution other than against the person, pay, arms, ammunition, equipment, regimental necessaries or clothing of such Soldier.

10. Applying the provisions of the law above quoted to the present case, the following conclusions are arrived at.

No Court of Requests can be convened at Bangalore because there is here a Court of Small Causes established by the Governor General in Council, the Civil Judge of the C & M Station having, by Foreign Department

? In 48 of Army Act

Notification No. 126 G.P dated 28th April 1881, has been vested with the powers of a Court of Small Causes under Act XI of 1865 (the Mofussil Small Cause Courts Act)

Even if a Court of Requests can be conferred it would not have jurisdiction in the cases now in question, because the Defendants are Soldiers of the Regular Forces.

11. As a Court of Requests has no jurisdiction, the cases become cognizable by the ordinary Civil and Small Cause Courts, and the cases may, it is submitted, be tried and disposed of under S. 144 Army Act by the Civil Court of the C & M Sts sitting as a Court of Small Causes. The Defendants cannot however be compelled to appear in Court under S. 144 Army Act. But the personal appearance of a Defendant is not necessary for the disposal of a suit. He may appear by his Agent (S. 465 Civil Pro: Code).

If judgment be given against the Soldiers, the Plaintiff can obtain execution by proceeding against their property & their pay, arms, ammunition, Equipments &c

12. Under these circumstances, it is submitted that the Civil Court of the C & M Stns appears to have jurisdiction in the cases now in question. The opinion of the Advocate General of Calcutta (Enclosed in No 1) is to the same effect, viz, that European Non-Commissioned Officers and Soldiers in India are liable to be sued for debt in Civil Courts and Courts of Small Causes.

1/Ka Coy. R.E. was in Kabul in 1879-80 & in Jellalabad in 1880-81

13. As it is not known on what grounds Major Maltby returned the plaint to the Plaintiff because the Defendants were Military men, it is submitted that the proceedings in the case may be called for and examined before final orders are passed on the question.

14. It may be added that final orders will eventually have to be passed by the President - & the High Court for the C & M Stations.

HC
28/6/85

Sec. Dept. calling for the Govt of India's approval. In any case the jurisdn of the Mily and Civil Courts would likely be concurrent. But there must be hundreds of precedents. Ascertain fm the Head Clerk what the practice has always been.

Sec. Dept
30/6

Draft submitted
Signing with the
directions, as
suggested

Secy
2/7/85

4?

15. In continuation of the notes submitted by Mr Anantaraam Rao dated 28th June 1905 and with reference to the letter written to the Civil Judge asking him to forward the record of any proceedings that may have taken in the cases in question and also to submit a statement of his reasons for holding that the ordinary Civil courts are debarred from entertaining suits of this nature, I beg to submit that the record of proceedings received does not show the circumstances under which the Civil Judge held that his court has no jurisdiction to entertain suits against soldiers. It is simply recorded in the proceedings that "I return the plaint for presentation in the proper court defendant being a military man and the suit for less than Rs 400/- Plaintiff to pay Costs—

16. The Civil Judge however in the letter from the Civil court No 923 dated 7th July 1905 and written in reply to letter from this office No $\frac{820}{407}$ dated 2nd July 1905

submits that he based his ruling under the following sections of the Army discipline Act of 1879 (This act has been amended by the Army Regulations of 1881)

"Section 69 (1) defines persons subject to military law as Soldiers and part I of the section mentions "all Soldiers of the regular forces" and that definition includes Soldiers of the 12th Lancers"

"Section 138 says that a soldier of Regular forces should not be liable to process of any Civil Court, and the section winds up with a proviso that he is liable if a notice is given"

55.141.142.143&144. "The Civil Judge continues that I read this section to be qualified by the next Sub-Division of the act which is headed "Courts of Requests" in India and turned to me to specially refer to the cases of the Army in India

Sec. 157 in the Act of 1881. "The 144 Section runs In India all actions of debt and personal actions against persons subject to military law other than Soldiers of the regular forces within the

jurisdiction of any Court of Such causes shall be recognizable by such Court to the extent of its powers"

17. The Sections of the Army discipline act of 1879 quoted by the Civil Judge, in the letter from the Civil Court, referred to above, have all been copied in the act of 1881 now in force

Section 169 of act 1879 corresponds to S 176 of the Regulations of 1881 (new act)
S 138 of act 1879 corresponds to S 144 of the new act
S 144 " " " 151 "
S 141 " " " 148 "
S 142 " " " 149 "
S 143 " " " 150 "
~~S 144~~ " " " 151.

18 It will be seen from the explanation offered by the Civil Judge that the Civil Courts have no jurisdiction to entertain suits against "Soldiers of the Regular forces" and therefore the Civil Court of the Cantonment was correct in ordering the plaints in the cases now in question to be returned to parties for presentation to the proper court having jurisdiction to try such suits.

19. In considering the reasons submitted by the Civil Judge we have to consider the opinion

expressed in letter from Asst Sec to the offg Judge advocate general army Head quarters Simla 4th Nov 1875

gment and the interpretation put upon these sections by the learned Advocate General. Mr Paul who says that- ~~that~~ "there is nothing in the terms of section 99 of the mutiny act of 1874 which takes away, interfers with, or negatives the jurisdiction of Civil Courts, in respect of suits over soldiers recognized by the terms of S. 130 of the mutiny act of 1874, and consequently my answer to the specific question by you is that- European and Commissioned officers and soldiers in India are liable to be sued for debt- in Civil Courts and Courts of Small Causes

× Corresponds to S 140 to 154 of the act of 1881 now in force

× Corresponds to S 116 of the new act-

20. Under these circumstances the only points for consideration are (I) whether actions of debt or personal actions are maintainable against Soldiers in Civil Courts by ordinary Civil jurisdiction? and if so, (II) can the Civil Courts of the station try suits against soldiers notwithstanding that there exists a Court of requests in the station?

21. I humbly presume that the records of cases in question have been called for and the reference has been made to the judge of the lower Court-

under the provisions of section 622 of the Civil Procedure Code which is to the following effect:-

The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fit.

If so, I venture to submit that in as much as the point now raised is a very important one and as the parties, in the lower Court were represented, Counsel for Plaintiff contending that the lower Court sitting as a Court and Small Causes Court had jurisdiction in the matter and the advocate for the Defendants maintaining to the contrary) a date may be fixed for hearing the points ~~etc~~ argued before

the Court- and for passing a judgment- as to the Court- may then seem fit

9th July 1805

We do not want to make a Judicial Case of it. If Cavaond v. Records were called in by an Execution (not a Prot) order of the Ref. Cannot Mr Abdul Rahman, who was for sometime Chief Clerk of the Court, say whether ~~there~~ Such ~~Complaint~~ suits of this kind was Ever brought against Soldiers, and, if so, what the practice of the Court was? We imagine there must have been any number of Similar cases

18.7.13

Since the establishment of the present- Civil and Sessions Court (1st March 1801) in some cases judgments- were given for Plaintiffs no objection having been taken by the Defendants- as to jurisdiction and in some cases Plaints- were returned to Plaintiffs the objection having been taken. As to what the number of these cases was very small (not more than 6 or 7 things)

The late Small Cause Court- threw out- some cases for want- of jurisdiction.

18.7.05

Ref.

(Spoken to Acting Registrar). 41 Laws Journ

provided by Sections 144, 148, and
157 of the Army Act of 1881 Sec. 144
makes the amount of the debt (that is,
value of subject matter of the suit) now
essential element, and so complicates
the question so far as the present case
is concerned — see also Mr Paul's Opinion
dated 4th November 1875. I incline to think
that the Court of Small Causes has
Concurrent jurisdn even if it does not
altogether oust the jurisdn of the Court
of Requests in places where it is estabd.
But I do not think the point is clear.
However it must have been settled times
without number in Secunderabad,
Bellary, Trichinopoly, &c. where
there are both large Cantonments and
Courts of Small Causes. The Pleader
we [illegible] probably be able to advise authoritatively on the point. Otherwise we
might write the Madras Govt. The
Question must have arisen in Madras.
If not, they will refer to their Advocate General

Bellary
21.7.83

The Secretary to the Bangalore Divn

Should be answered in the terms A.B
of Mr. Plumer's d.o dated the 8th inst.
and should be told that the Clk of the Crn.
Station is being called on to submit
the record of the cases in wh. plaints
have been rejected, in view to the resto-
ration of them on the file on the Original
Side of his Court.

The Clk of the Crn. Station
should be instructed accordingly &
asked for early compliance.

The Sen! having addressed me
direct the answer thro' should be
signed by myself.

Let me see the draft.

I have acknowledged Mr. Plumer's
courtesy & also
Major Hallett. J 10.8.85

Mem. Put up Papers early. Mem
10.8.85-39
220

22. The Records of cases are already in the office. They were received with letter No. 923 dated 7th July 1885 (3) from the Civil and Sessions Judge.

23. The Proceedings of the cases may be revised under Section 622 of the Civil Procedure Code, and the orders communicated to the Civil Judge in the form of a judgement.

24. Draft of letter to the General of the Bangalore Division is submitted as directed. The last paragraph of the ~~letter is submitted, requires a direction or letter for the cases are before the Court~~ draft. Judicial is not in conformity with the orders, as the proceedings in the cases ordered to be called for, are already in the office. The General commanding the Division is therefore informed that the Proceedings are being revised.

25. May the Cases be brought on the file of the Residents Court as Revision Cases and numbered and an order prepared to be read in Court and sent to the Civil Court for guidance

Submitted for orders. 9/8/85

Submitted. 17.8.85.

Resident 18/8/85

Issued. 18/8/85

Resident 18/8/85

Letter No 1066 of 24 July 1885
From C. & S. Judge.

With reference to this Office No 928 of 7th July 85 regards to be framed with the Lists enclosed as to whether the Cases mentioned by the 3rd J.C. & S. J. in respecting Claims of Native Soldiers in Correct. and Letter is come & Lieu on the Question.

Court Records note as above.

If the Rubbers Regulations only apply to Contonments strictly so called then Escape Mallays Native Lines come and be entitled to have awarded the Prisoner. Bhagalpur is not a "Contonment". The Contonment Law & Regulations do not apply to it. It is occupied by Civil Officers Magistrate Collector Judges Ordinary Civil Courts in Districts can take up such Cases or if they have Concurrent Jurisdiction with the Court of Requests, if any, then it can the C. & S. Court here. Put up the papers. (Sd) C.H.H. 27-7-85.

File with the Recital. No 101 Butt. Posted to Judicial Depart 28/7

Rec'd 29.7.85.

Rec'd.

2 Appl. Nos submitted unapproved.

30.7.85

2.8.

Some. 2.8.

OFFICE OF
Mis : 336
20 MAY
RESIDENT IN MYSORE

From Capt. Cole Offg Resident Coorg
To The Officer Commanding Bangalore
Dated Coorg 20th May 1855
Received 21st "

Sir

I have the honor to forward for your information a Petition which has been presented to me by Chinnappa Gowda Patell of Kodlipet in this District, complaining of the conduct of a party of Sepoys of the 12th Regt Native Infantry under the command of Subadar Shaik Sahib, who, he states, have plundered his house and property, and carried off a number of his cattle.

I have &c
(Signed) Cole
Capt.
Commg Coorg

Accompanying Correspondence
embodying a Petition for Redress by a
Native Woman against certain Soldiers
12th Regt Native Infantry

Shaik Sahib

If this is all right send up
the necessary Order to the
Judge Mr C. & S. Coorg.
Rees
30/5-

Rect 1.6.55 HC

Note Sent
HC 29/6/55

Head Quarters Bangalore Division
Bangalore 30th May 1885

No. 89/A

From

The Officer Commanding
Bangalore

To,

The Resident in Mysore
Bangalore

Sir

I have reference to the accompanying correspondence embodying a plaint for debt by a native tradesmen against certain Soldiers of the 12th R. Lancers serving in this Garrison, and to the ruling of the Judge of the Small Cause Court at Bangalore to the effect that he has not jurisdiction in such a case, and also to the opinion of the Advocate General Calcutta, a copy of which I beg to enclose - that a Soldier is liable to be sued for debt in Civil Courts and Courts of Small Causes. I have the honor to request that you will issue such orders as may be necessary to ensure due justice being done to the plaintiff, as it is obviously inadvisable that Soldiers should be

permitted

permitted to escape from the legal consequences of their acts.

I have the honor to be
Sir
Your most Obed. Serv.

W. G. Cumberlege Colonel R.N.A.
Commanding
Bangalore

Translation of Plaint.

In the Court of the Sessions (Civil)
Judge of the Civil and Military Station
of Bangalore.
Civil suit No. 394 of 1885.

Periakka, Charcoal seller
Vannarpet } — Plaintiff.

vs.

Sergeant Taylor,
12th Royal Lancers,
Civil and Military
Station, Bangalore } — Defendant.

Amount sued for — Rs 17-6-0

Cause of action arose on the 13th
of September 1884.

Plaint.

Plaintiff claims:

Value of charcoal bought
of her by Defendant from
the 31st July 1884 to the
2nd of April 1885, as
per 2 Chits enclosed Rs 19-6-0

Value of 8 bags of Charcoal
given to Housekeeper Mu-
nia on the 5th April 1884 Rs 4-0-0

Rs 23-6-0

Deduct
Amount paid by defendant on the 12th September 1884 } 6—0—0

Balance 17—6—0

The defendant delays payment of the amount though asked for it many a time. Hence the suit.

Prays for Judgment for the amount claimed.

X Mark of Periakka

Order of Court.

Plaint returned for presentation in a proper Court.

/sd/ E. P. Maltby
1. 5. 85

In the Court of the Sessions Judge (Civil Jurg.) of the Civil and Military station, Bangalore.

Civil (Suit) No. 395.

Periyakka
Charcoal seller
Vannarpet
(Plff)

vs

Sr: Sergeant S.S.E
Body
12th Royal Lancers
C & M station
Bangalore
(Defendant)

Amount sued for Rs. 12-8-0.

Cause of action arose on 20th April 1884.

Plaint

Plaintiff states:—

That the Defendant bought of her 25 bags of Charcoal from the 6th March to the 14th April 1884, the price of which is Rs. 12-8-0 as per two Chits enclosed.—

That the said amount has not been paid by the Defendant. Hence the present suit.—

Prays for Judgment for the amount claimed together with court costs.

her
Periyakka.
mark

Order of Court

Plaint returned to be presented in a proper Court, Defendant being a Military man.

(Sd.) E.P. Mallby
1.5.85

In the Court of the Sessions (Civil?) Judge, Civil and Military station of Bangalore

Civil suit No. 396 of 1885.

Periakka, Charcoal seller, Vannarpett } — Plaintiff.

~~Vs~~

Fr. Sergeant Buckland, 12th Royal Lancers, Civil and Military Station, Bangalore } — Defendant.

Amount suid for Rs 19—8—

Cause of action arose on the 6th of April 1885.

Plaint.

Plaintiff states:-

that 24 bags of charcoal were supplied to the Defendant from the 5th December 1882 to the 5th April 1885, (as per two chits enclosed) at a cost of Rs 12—— —.

that on the 2nd November 1884, 15 bags of charcoal were given to Valoyddam, ~~clean~~ boy; value of the same Rs 7-8—

that the total amount due from

30th

the defendant is Rs 19-8-4; that he has not paid the amount though called on to pay it many a time. Hence the suit now filed.

Prays for judgment for the amount claimed with court costs.

X Mark of Periakka.

Order of Court

Plaint returned for prosecution in a proper Court. Plff to pay Defts costs.

HH
7.5.85

No. 920 Enc: 14.
407

2.

Office of the Resident in Mysore
At Bangalore 2nd July 1885.

To.
The Civil Judge,
Civil and Military Station
of Bangalore

Sir,

I am directed to forward herewith copy of a *Letter No. 89/A dated the 30th May 1885 from the Officer Commanding the Bangalore Station, forwarding for the Resident's consideration three* plaints filed in your Court by a Native woman named Tenakka against three Soldiers of the 12th Royal Lancers, and returned ~~under~~ and your address to the Plaintiff for presentation to the proper Court, on the ground that the Defendants are Military men

2. I am directed to request that you will be

*(with original enclosures, to be returned).

*in Small Cause Suits Nos 394, 395 & 396 of 1885 —

In Rs 7-23 & 7-7-85

2

do good as to forward for
the information of the Offg
President the record of any
proceedings that you may
have taken in the cases
in question, ~~and~~ with a statement of
your reasons for holding that ~~jurisdiction~~ Alien Enemy Civil
Courts ~~is not ousted in favour of~~ are debarred
~~that European Soldiers are~~
~~not liable to be sued in~~
~~the Civil Courts and~~
~~Courts of Small Causes~~
~~for debt.~~
from entertaining suits of this
nature.

3. The favour of an early
answer is requested.

I have &c.

Illegible
30/6

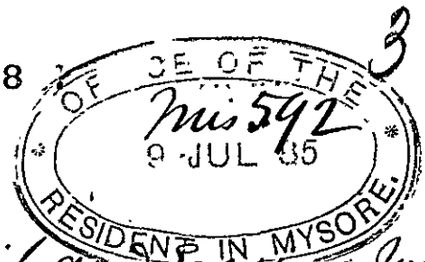
Asstt: to the Resident

GJ 1.7.

HA
30/6/16

603

188



3

From

The Civil and Sessions Judge
C. & M. Station

Dated

7th July 1885

Received 9th

Enclosures No.

No. 923.

This Office No 820/407 of 2-7-85

Forwarding the Records of the Small Cause Suits Nos 394-395 and 396 of 1885.

Received
15. 7. 85.
9.

No 923. Enc: 14. and Records. Bangalore 7th July 1885

From

The Offg: Civil & Sessions Judge
Civil & Military Station
Bangalore.

To

The Assistant to the Resident
in Mysore.

Sir,

In reply to your letter No 820/409* of 2nd July 1885, I have the honour to forward the records of the cases referred to. I base my ruling under the following Sections of the Army Discipline Act of 1879. Section 169 (1) defines persons subject to Military Law as soldiers and para 1 of the Section mentions "all soldiers of the Regular Forces" and that definition includes soldiers in the 12th Lancers. Section 138 says that a soldier of the Regular forces shall not be liable to proceedings of a Civil Court and the Section winds up with a proviso that he is liable if notice is given. I read this Section to be qualified by the next Sub Division of the Act which is headed "Courts of Request in India" and ranged to

see

25

*Enclosures returned

re 394 of 1885 Peringlkka vs Sergt-Taylor
re 395 of 1885 Peringlkka vs Sergt-Body
re 396 of 1885 Peringlkka vs Sergt-Buckland

(Except in cases of Criminal cases (Mark (2))

(Except in Criminal cases specified)

See 141. 142. 143 144

ear. to specially refer to the cases of the Army in India. The 44th Section runs "In India all actions of debt and personal actions against persons subject to Military Law, other than Soldiers of the Regular forces, within the jurisdiction of any Court of Small Causes, shall be recognizable by such Court to the extent of its powers.

I have the honour to be

Sir,

Your most obedient servant

Attorney

Offg: Civil & Sessions Judge

9

No. 89
A.

Head Quarters. Bangalore Division.
Bangalore 30th May 1885.

From.

The Officer Commanding.
Bangalore.

To.

The Resident in Mysore.
Bangalore

Sir,

With reference to the accompanying Correspondence embodying a plaint for debt by a Native woman against certain soldiers of the 13th Royal Lancers serving in this Garrison, and to the ruling of the Judge of the Small Cause Court at Bangalore to the effect that he has not jurisdiction in such a case, and also to the opinion of the Advocate-General, Calcutta, (a copy of which I beg to enclose), that a soldier is liable to be sued for debt in Civil Courts and Courts of Small Causes; I have the honor to request that you will issue such orders as may be necessary to ensure due justice being done

to

23

To Cause No. 1307 of 1885

to the Plaintiff, as it is obviously inadvisable that soldiers should be permitted to escape from the legal consequences of their acts. —

There is the Court's order in the matter.

I have &c.

(signed) W.G. Andrews. Col. R.H.A.
Commanding. Bangalore.

Copy.

P. H. Ismail.
Registrar.

From

G. C. Paul Esq

Offg. Advocate General

To

The Offg Judge Advocate General

Army Head Quarters

Simla

Fort William 4th November 1875

Sir,

I have the honor to acknowledge your letter dated the 4th October last, and with reference to the question therein stated I beg to state my opinion as follows:-

There is nothing in the terms of Section †99 of the Mutiny Act of 1874 which takes away, interferes with, or negatives, the jurisdiction of Civil Courts, in respect of suits, over Soldiers recognized by the terms of Section 40⊗ of the Mutiny Act of 1874, and consequently my answer to the specific question put by you is that European non-commissioned Officers and Soldiers in India are liable to be sued for debt in Civil Courts and Courts of Small Causes. In all probability the words "not Soldiers" were introduced into

† corresponds to S. 145 of 51 of the Army Act, 1881 now in force.

⊗ S. 144 of the Army Act now in force. † 1881?

into the Mutiny Act of 1874 with the intention of taking away from Civil Courts and Courts of Small Causes the power to issue special execution as previously provided against Soldiers by the 99th Section of the Mutiny Act of 1869.

I have &c.
(Sd) G. C. Paul

True copy of a copy
(Sd) W. St. Aubrey Major
Depy. Judge Advocate

True Copy
H. Pennycuick Colonel
Asst. Adjt. Genl.
Bangalore Division

To

Colonel H. M. Longworth

Asistant Adjutant General

Bangalore Division

Honored Sir

Bangalore

I Most Respectfully beg to bring to your Honors Kind and favourable Consideration to my Case.

Having supplyed Charcoal for the use of the Farrier Shop of the 12th Royal Lancers. the Farrier Sargeant Refuse to buy me I Reported the Circumstance to the Adjutant General. the Adjutant General Sent my Petition to the Officer Commanding the 12th Royal Lancers. the Commanding Officer When Enquireing the Case one of the Sargeants willing to buy. the other 2 Sargeant Totaly Refuse to buy. I filed the Case in the Small Causes Court the Jems asked the Court the Case to be heard in their own Court. Under the above circumstance I beg your Honor will buy my Case before the Court of Request and see the Poor Woomen to get Settle for Which act of charrity your Petitioner as in duty bound Ever. and Endeavouring all my Petitions from the Civil Court for your Honors Perusal. and also I have witnesses to prove.

I beg to Remain

Honored Sir your

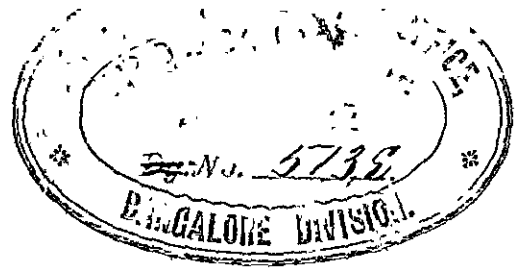
Most Obd Servant

Piraccee

Charcoal Merchant

Bangalore
1st May 1885

19



Memorandum

Mr. Arthur Mr Corner is informed with reference to his letter No 83 of the 2nd instant that the Dep. Judge Advocate of this Circle is precluded from offering any opinion on the case referred to therein, as orders, now appear to have been passed by the Civil Judge of this station, connected therewith

J. Wallace Major
A. A. G.

Mr. Arthur Mr Corner
Advocate Mysore Bar

To
The Station Staff Officer
Bangalore

Sir

With Reference to G.O.C.C No 36 dated 16th October 1848. I beg to submit my Claim against Farrear Sargeant of the 12th Royal Lancers in the sum of Rupees 17-8-0 as his Chitts supplyed Charcoal for the use of Farrear shop of the 12 Royal Lancers as the Rupees in Lieu of leaving Bangalore under the above circumstances I respectfully Solicit that you will Kindly be pleased to Lay the same before a Court of Request in order the Amount there may be adjusted by the Farrears Sargeant there being no prospect of this Sargeant liquidating their debt

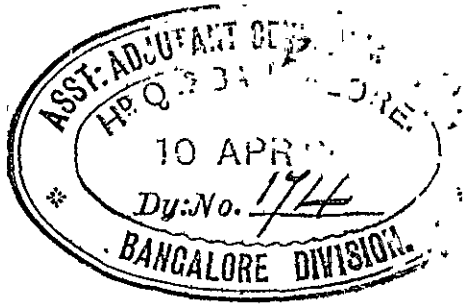
For which Kindness I shall ever feel most greatful

I beg to Remain
Honord Sir your most
Obd Servant
Perrea acca Widow
Charcoal woman

Bangalore
11th April 1865
Witness and Tookans
Cunneen
Moonneen
Valiptum

Sargeant Brethurden Farrear Sergeant 17-8-0
Do Taylor Do Do 17-6-0
Do Body Do Do 12-8-0
Do Bucklon Do Do 12-0-0
Do Do Do Do 7-8-0

P.S. I am Poor Widow Who trusted for the use of the Farrear Shop and got Charcoal from Merchants and I hold their Receipt Form for the supply of Charcoal - I have witness also to prove that I did supply -



Forwarded to the Officer
Commanding XII. R.L.
for information
and return

By order
F. R. Henning Major
Offg Asst Adjt Genl
Bang Div

Hd Qrs
12 Apl 5

No. 703
28 JUL
RESIDENCY IN MYSORE

Civil and Sessions Court
Civil and Military Station
Bangalore, 24th July 1885

The Civil and Sessions Judge,
Civil and Military Station,
Bangalore.

The Assistant
to the Resident
in Mysore,
Bangalore.

Sir,

Adverting to my predecessor's letter No. 923 of the 7th July 1885, I have the honor to request to be favored at an early date with the Resident's ruling as to whether the course pursued in rejecting claims against soldiers is correct as I find that several cases have been adjourned pending instructions on the point. It appears to me further doubtful whether Bangalore can be regarded as a Cantonment within the scope of the act. It has been repeatedly decided that it is a Civil Station at which Military Troops are stationed similar to Madras, Portsmouth and other towns in India and England. Whether such position is in any way affected by the assignment of the territory by His Highness the Maharajah of Mysore, as a Civil and Military Station, is a point yet requiring determination and upon which I beg to be favored with the Resident's views.

I have the honor to be,
Sir,
Your most Obt. Servt.

J. Mill
Civil and Sessions Judge

46

15

Bangalore 5
August 14th/85

My dear Mrs Pinkerton.

Your letter of the 3rd inst only reached me yesterday. You ask me "whether there is such a Court as a Court of Requests in Bangalore, and, if so, whether suits for debt for small sums brought against European soldiers of H. M. Army should be brought in it?"

There are two descriptions of Courts of Request in India.

1st Courts of Request under the Army act. These have their being under certain conditions which do not obtain in Bangalore — but even were there such a Court here British Soldiers would not be amenable to it, for they are always and everywhere beyond the jurisdiction of Courts of Request. No European soldier of H. M. Army is ever amenable to a Court of Request.

2° Courts of Request under Act XI of 1841. These Courts have jurisdiction over Native Army, including followers. There is such a Court held in Bangalore every month — and a great nuisance it is.

14

D/ 6th Aug 0./06. 6
with file No. 101.

My dear Plumer,

I have already to-day asked your opinion upon one case involving some legal difficulty. I ~~fear~~ am going to trespass still further on your kindness by asking you kindly to be so good as to advise me on another case regarding which I am in some doubt. Do you think that Major Malby's proceedings were justified in refusing to entertain the Plaintiff's suit in his Court, and in his entertaining Circ. that his jurisdn is taxed by the sections of the Army Act 42 & 43. Do you? I cannot help thinking he is wrong, & that he has at any rate concurrent jurisdn, but I should like very much to have the benefit of your experience in the Case.

Yrs 2.8.

12

D/ 6th Augt: 1865.

Major DD

My dear L. Hughes Hallett

The question has arisen whether the ordinary Civil Courts in the C. of M. Station of Bangalore, Esqra. Major Mattby's Court, can entertain suits for debt & small sums brought against Christian Soldiers of H.M's Army, or whether the Jurisdiction of those Courts is ousted by the Army Act, and the Complaint should be preferred in a Military Court of Requests.

Will you kindly let me know whether there is such a Court as a Court of Requests in Bangalore, and if so whether such suits should be brought in it, the Jurisdiction of the ordinary Courts being altogether barred?

The matter is of some importance as a good many suits depend in some measure on the decision that must now be given in this Resy.

Yrs

L 2.8.

Home
30/7/65

Under the jurisdiction of Civil & Small Cause Courts
in actions in which both Commissioned Officers & Soldiers of the
Regular Officers in India are defendants

My dear Sir Theodore

Martindale says "he does not want
to make a Judicial case of this";
but Sir H must make a Judicial case of
it. The Resident has no right to
interfere with a Judicial order passed by the
C. of Judge of the C. of S. Small Causes Court alone
can do that. Sir H should call for the
records of those cases in which both the
Plaintiffs, under the prov. of
Sect. 622 of the Civil Proc Code, has
ordered a Chief Court Judge to strike

RAZOR COMMISSION

I've Amanta Rows opinion is perfectly sound I think on all points but one which I will presently refer to.

The operation of the army Act is not limited to Cantonments as Col Hill seems to suppose, it provides apply to all Soldiers of the Regular Forces in India or elsewhere.

In my opinion, on the last question, (briefly is this) that the ordinary Civil Courts

A { Original Jurisdiction in the Civil & Sessions Bangalore have jurisdiction in suits in which European Non-Com. Officers & Soldiers of the Regular Forces are Parties

Such Jurisdiction seems to be expressly limited in such Courts by the Provisions of 4 Cl. (5) Sect. 44 of the Army Act

B { I am of opinion that the Small Cause Court of the C. & M. Station Bangalore has such jurisdiction in like suits. Such jurisdiction seems to be expressly barred by the Provisions of Sect. 151 para (1) of the Army Act

I've Amanta Row in para 10 of his letter correctly enough argues that the Jurisdiction

Re the jurisdict^n of Civil & Small Cause Courts in actions in which Non-Comm^d Officers & Soldiers of the Regular Officers in India are Defendants

My dear Sir Alexander

Hartsidale says "he does not want to make a Judicial case of the" but Sir H must make a Jud^l case of it. He resident as such cannot interfere with a Judicial order passed by the C.J. Judge of the C^t in S^r^s the High Court alone can do that. Sir H should call for the records of those cases in which Hartsidale decided the Plaintiffs under the prov. of Sect^n 622 of the Civil Pro Code & pass orders as a High Court Judge & strike

Soldiers of the Regular Forces are legally
liable to actions at law it follows
that such actions must be brought
in the original side of the Civil
Courts
Possibly the Legislature by vesting the
jurisdiction in such suits of Small
Cause Courts wished to give the right
of appeal to Soldiers.
I should direct the Civil & S. Judge to
return the file to the original side
of this Court the Plaintiff to elect

MYSORE COMMISSION

by which they try the case as original

suits.

I may add that I have searched the digests of the reported cases of the several High Courts in India & I cannot find a case in point.

I remain
Yours faithfully
C. Rivers

Aug. 8th/85.

9

Office of the Resident in Mysore

No. 1307/673. Dated Bangalore 18th August 1885.

To,

The Officer,
Commanding Bangalore Dn.

Sir,

I have the honor to acknowledge the receipt of your letter No. 89/A dated the 30th May 1885, and enclosures, regarding the rejection by the Judge of the Small Cause Court, Bangalore, of certain plaints for debt brought by a native woman against three soldiers of the 12th Royal Lancers serving in this Garrison of Bangalore.

2. In reply, I have the honor to say that in my opinion the Civil Judge acted under a mis-apprehension in declining to ~~entertain~~ admit the plaints in question on the ground that he had no jurisdiction enabling him to entertain them. I am advised

that

that the ordinary Civil Courts of Original Jurisdiction in the Civil and Military Station, Bangalore, have jurisdiction in suits in which European Non-Commissioned Officers and Soldiers of the Regular Forces are parties. Such jurisdiction seems to be expressly vested in such Courts by the proviso 1 to Cl:(5), Sec:144 of the Army Act of 1881.

3. ~~At the same time it appears~~ that the Small Cause Court of the C & M. Station of Bangalore has no jurisdiction in suits of the like nature, as such jurisdiction seems to be expressly barred by the provisions of Sec: 151, para (1) of the Army Act. —

4. The proceedings of the suits under reference are now before me, and ~~orders will be passed in due~~ arguing issued to-day.

directing him

~~Course directing~~ to the Civil Judge to

restore the ~~cases~~ to his file on the

original side of his Court, and to

dispose of them as original suits.

Thane Le,

Resident

18.8.85. 17/0/83

17.0.05.